



03 APR 2006

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In re Application of :
VAN DYK, Andre :
U.S. Application No.: 10/500,356 :
PCT No.: PCT/ZA02/00209 :
Int. Filing Date: 17 December 2002 :
Priority Date: 03 January 2002 :
Attorney's Docket No.: VAND3026/FJD :
For: ACTIVATED STEMMING DEVICE :

DECISION

The decision is in response to the "Renewed Petition Under 37 CFR 1.47(b)" submitted on 18 January 2006.

BACKGROUND

On 18 November 2005, a decision dismissing applicant's petition under 37 CFR 1.47(b) was mailed. The 37 CFR 1.47(b) applicant failed to meet the requirements of items (2) and (6) of 37 CFR 1.47(b).

On 18 January 2006, petitioner filed a renewed petition.

DISCUSSION

A petition under 37 CFR 1.47(b) requires (1) the petition fee, (2) factual proof that the inventor refuses to execute the application or cannot be located, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. Applicant satisfied items (1), (3), (4), and (5) in the initial petition.

With regard to item (2), the prior decision indicated that it was not clear whether Mr. Van Dyk was presented with a complete copy of the application. Even if provided a copy of the application, it was also not clear that the time frame involved would constitute a refusal. The decision also noted that it does not appear that Mr. Taberer had first-hand knowledge of what papers were sent to Mr. Van Dyk with the letter dated 3 May 2005.

Applicant requests reconsideration of the prior decision and states that a full copy of the specification was sent via email dated 17 December 2004 addressed to the nonsigning inventor. Petitioner argues that the "application had a title and a specification and the assignment identified the international application number." Petitioner concludes that "[t]here can be no doubt what application was being submitted to Mr. Van Dyk, nor could Van Dyk have any such doubt."

In addition, petitioner contends that the statement by Mr. Taberer "identified specifically what was sent to Mr. Van Dyk" and it is not necessary that the documents identified in the statement of Mr. Taberer be placed in the mail by him. All that matters is that Mr. Taberer "attests to their existence, and that they were sent."

A review of the documentary evidence records that a complete copy of the application was sent to Mr. Van Dyk on 3 May 2005. The documents were delivered on 9 May 2005. Moreover, the statement by Mr. Taberer dated 30 May 2005 indicates that he called Mr. Van Dyk on 23 May 2005 and was told that the nonsigning inventor would not cooperate. Taberer Decl. at ¶ 3. This constitutes an oral refusal and is sufficient to satisfy section 409.03(d) of the MPEP.¹ Item (2) is satisfied.

Regarding item (6), petitioner has provided a statement of Irreparable damage in the renewed petition as required.

Accordingly, the 37 CFR 1.47(b) applicant has now met all of the requirements of 37 CFR 1.47(b).

CONCLUSION

Applicant's renewed petition under 37 CFR 1.47(b) is **GRANTED**.

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the non-signing inventor at the last known address of record as set forth in the papers filed 22 June 2005 and a notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 17 December 2002 under 35 U.S.C. 363, and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 22 June 2005.

¹ MPEP § 409.03(d) states, in part: Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. (Emphasis added).

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

A handwritten signature in black ink, reading "James Thomson". The signature is written in a cursive style with a large, stylized "J" and "T".

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Mr. Van Dyke:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

James Thomson

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